independent contractors employed by them.[14] It has been held that such contractors are not liable, unless the commissioners themselves would have been under like circumstances.[15] But the better rule is in favor of their liability, irrespective of the liability of the commissioners. An independent contractor owes a general duty to all persons to perform his work in a careful manner, so that no harm shall befall anyone. There appears to be no sound reason why a road contractor should receive exemption from the operation of this rule. He is liable in tort to which his contract with the county officials was only an inducement, and such appears to be the weight of authority.[16]

LIABILITY OF AGRICULTURAL SOCIETIES FOR INJURIES TO VISITORS AT FAIRS.—The principal functions of agricultural societies are to stimulate interest in agriculture, stock raising, and similar industries, and to furnish harmless and instructive amusement to the public. One of the most usual and effective methods of performing these functions is by holding fairs or expositions, at which premiums are offered for the best exhibits of products of the above mentioned industries, and to which large numbers of people are attracted, partly by an interest in the industries represented and partly by the amusements afforded. Interesting questions often arise as to the liability of these societies for injuries to visitors at their fairs, arising out of the negligence of the society, its officers or agents, or that of proprietors of places of amusement located on the fair grounds. In the decision of these questions, the first and most important thing to consider is the nature of the society: whether it is a public corporation acting as a department or agent of the government or a mere private corporation. On account of the vast public importance of the interests for the promotion of which these societies exist, they must necessarily assume something of a public nature; but in the final analysis their character depends entirely upon the statutes under which they are created.[1]

Since they are not political or territorial subdivisions of the state created by the state for the sole purpose of administering local civil government, they are clearly not municipal corporations.[2]

In the great majority of the states they are voluntary organiza-

---

[14] These cases may become of great importance if the system of road repair now installed in Massachusetts is generally adopted. Under this system permanent local contractors are given charge each of a few miles of highway which they are to keep always in repair without special directions from the highway officials.

[15] Schneider *v.* Cahill, (Ky.), 127 S. W. 143, 27 L. R. A. (N. S.) 1009.

[16] Wade *v.* Gray, 104 Miss. 151, 61 Sou. 168, 43 L. R. A. (N. S.) 1046; Solberg *v.* Schlosser, 20 N. D. 107, 127 N. W. 91.

[1] Dunn *v.* Brown County Agricultural Society, 40 Ohio St. 93, 18 N. E. 496, 15 Am. St. Rep. 556, 1 L. R. A. 754; Lane *v.* Minn. St. Agricultural Society, 62 Minn. 175, 64 N. W. 382, 29 L. R. A. 708; Downing *v.* Ind. St. Bd. of Agriculture, 129 Ind. 443, 28 N. E. 123, 614, 12 L. R. A. 664; Minear *v.* St. Bd. Agriculture, 259 Ill. 549, 102 N. E. 1082, Ann. Cas. 1914B, 1290.

[2] See 1 DILLON, MUNICIPAL CORP. (5th ed.), § 34.

tions, the state has no right to dissolve them at will, and their officers and the funds coming into their hands are to some extent beyond the control of the state, and in these states they are held to be mere private corporations.[3] And it is well settled that where they are held to be private corporations they are liable for their torts and those of their servants committed in the course of their duties to the same extent as any other private corporation.[4] Furthermore it is their duty to provide for the protection and safety of those who come on their grounds by their invitation, express or implied, and they are liable for any injuries arising out of a failure to perform this duty, whether it be the direct result of the negligence of the society or that of independent contractors conducting places of amusement on the grounds.[5]

But where they are created by statute for the sole purpose of advancing public interests, and not for pecuniary gain, and their officers and all funds coming into their hands, and the very existence of the society itself, are under the complete control of the state, they are held to be public corporations or departments or agencies of the state.[6] In these states since they are acting as agents of the state performing governmental functions delegated to them by the state, they are clothed with that immunity from suit which is the attribute of every sovereign state, and, in the absence of statutes expressly declaring them to be liable, are not liable for their torts or those committed by their officers, agents, or servants.[7] Thus, in a recent case, *Morrison* v. *MacLaren,* 160 Wis. 621, 152 N. W. 475, an agricultural board created for the sole purpose of promoting the interests of agriculture and similar industries, under a stat-

[3] Dunn *v.* Brown County Agricultural Soc., *supra:* Lane *v.* Minn. St. Agricultural Soc., *supra.*

[4] Dunn *v.* Brown County Agricultural Soc., *supra;* Oakland City Agricultural and Industrial Soc. *v.* Bingham, 4 Ind. App. 545, 31 N. E. 383.

[5] Thus where a state fair association, under a contract giving the exclusive use of a portion of its grounds to an exhibitor, advertised the exhibit as one of the attractions of the fair, it was held liable for injuries to a spectator caused by the falling of seats negligently constructed by the exhibitor. Tex. St. Fair *v.* Brittain, 56 C. C. A. 499, 118 Fed. 713. And where an agricultural society leased to an independent contractor a space for a shooting gallery, and through his negligence in arranging the gallery and not providing sufficient shields, and in using the wrong kind of ammunition, a visitor to the fair who was standing on a railway platform just outside the grounds was shot and killed, the association was held liable. Thornton *v.* Me. St. Agricultural Soc., 97 Me. 108, 53 Atl. 979, 94 Am. St. Rep. 488. See also Selinas *v.* Vt. St. Agricultural Soc., 60 Vt. 249, 15 Atl. 117, 6 Am. St. Rep. 114; Higgins *v.* Franklin County Agricultural Soc., 100 Me. 565, 62 Atl. 708, 3 L. R. A. (N. S.) 1132.

[6] Berman *v.* Minn. St. Agricultural Soc., 93 Minn. 125, 100 N. W. 732; Minear *v.* St. Bd. Agriculture, *supra;* Hern *v.* Iowa St. Agricultural Soc., 91 Iowa 97, 58 N. W. 1092; Melvin *v.* State, 121 Cal. 16, 53 Pac. 416. While they are variously called public corporations, and agencies and departments of the state, the practical effect so far as their liability for tort is concerned is the same.

[7] Berman *v.* Minn. St. Agricultural Soc., *supra;* Minear *v.* St. Bd. of Agriculture, *supra.*

ute providing for the appointment of its members by the governor and for the control of its funds by the state, was held to be an agency of the state engaged in the performance of a governmental function; and when it gave a public aeroplane flight in connection with its fair it was held not liable for an injury to one attending the fair who was struck by the aeroplane.[8] Moreover it is held that statutes expressly giving such societies the power to sue and be sued do not make them liable for their torts.[9]

The question whether or not the state has complete control of the funds of the society seems to be the chief criterion in determining its nature.[10] And, while they have frequently been mentioned in the opinions, the facts that no shares of stock are issued, or that the societies are required to make annual reports to the state, or that appropriations for their aid are made by the legislature, seem to be of little actual weight in determining the question.[11] Railroads and many other private corporations are required to make annual reports to the state, and often private corporations which are of great interest to the public are aided by legislative appropriations.

In many of the opinions the courts have considered the question whether or not the act out of which the injury arose was committed in the performance of a governmental function.[12] But in the actual decision of the cases this question seems to have little weight, and an uniform rule seems to have been adopted, making the question of liability depend entirely upon the nature of the society. It is to be hoped that this rule will be carefully followed, and that in this way will be avoided a confusion similar to that which has arisen in cases concerning the liability for negligence of municipal corporations,

---

[8] The court said: "It is a public corporation provided for by the statute and organized for purely public purposes as an arm or agency of the state to carry on a function impressed with a public purpose for the benefit of the people of the state. * * * The giving of the state fair and exhibitions is done by the state through this agency in the discharge of a governmental function to promote the general welfare of the people of the whole state, and no private or local interests are subserved."

[9] Minear *v.* St. Bd. Agriculture, *supra.* See also Leavell *v.* West Ky. Asylum for Insane, 122 Ky. 213, 12 Ann. Cas. 827, 91 S. W. 671, 4 L. R. A. (N. S.), 269.

[10] This is clearly shown by two Minnesota cases: when Lane *v.* Minn. St. Agricultural Soc., *supra,* was decided, the society derived large revenues from membership and admission fees and the sale of privileges, over which the state had no control, and the society was held to be a private corporation; but when the case of Berman *v.* Minn. St. Agricultural Soc., *supra,* came before the courts, an act had been passed transferring the right to the control of the funds of the society to the state, and it was held that this relieved the society of its private interests, and that it was therefore an arm or agency of the state. See also Melvin *v.* State, *supra.*

[11] Lane *v.* Minn. St. Agricultural Soc., *supra;* Downing *v.* Ind. St. Bd. Agriculture, *supra.*

[12] See Minear *v.* St. Bd. Agriculture, *supra.* See also Morrison *v.* MacLaren, 160 Wis. 621, 152 N. W. 475 (principal case), where giving an æroplane flight in connection with a state fair was held to be a governmental function.

which has grown out of an attempt to distinguish between acts committed by them in the performance of governmental functions and those committed while acting in a so-called private capacity.[13]

STOCKHOLDERS' SUITS IN BEHALF OF THE CORPORATION FOR WRONGS OF THE DIRECTORS TO THE CORPORATION.—The directors of a corporation, while having the power of management of the corporation and the control of the corporate property, are not true trustees either in regard to the corporation or to the stockholders, for the legal title to the corporate property is not in them. But their position in regard to these things has for obvious reasons created them quasi-trustees towards the corporate body with respect to the corporate property and towards the stockholders with respect to their shares of stock.[1] Towards the latter, however, there is no trust relation of any kind as regards the control and management of the corporate property, in as much as a shareholder does not, by virtue of ownership of shares of stock, acquire any estate, legal or equitable, in the property of the corporation.[2] So, as a general rule, in equity as well as at law, redress for wrongs against the corporate body must be sought in a suit by the corporation.[3] The duty of taking steps to do this devolves upon the directors, who, except where corporate action is decreed by the stockholders, are the mentors and originators of any action of the corporation. But the frequent occasions where the wrong is by the directors would necessitate the somewhat anomalous position of the directors acting to have a suit brought against themselves to redress wrong occasioned by their own misconduct. Courts of equity recognizing this state of affairs will, under some conditions, entertain suits brought by stockholders in behalf of the corporation.[4]

There are apparently two lines of reasoning upon which the courts proceed in allowing this relief. The first is deduced from the familiar doctrine that equity, in a proper case, will look beyond the corporate body as a legal entity distinct from its members and, disregarding the fiction, will recognize the fact that a corpora-

[13] See "THE NATURE OF GOVERNMENTAL FUNCTIONS," 1 VA. L. REV. 497.

[1] Pomeroy, EQUITY JURISPRUDENCE, 3rd ed., § 1090.

[2] Bradley *v.* Holdsworth, 3 Mees. & W. 422; Reg. *v.* Arnaud, 9 Q. B. 806; Parker *v.* Bethel Hotel Co., 96 Tenn. 252, 34 S. W. 209; Williamson's Syndics *v.* Smoot, 7 Martin (La.) 31, 12 Am. Dec. 494; Button *v.* Hoffman, 61 Wis. 20, 20 N. W. 667, 50 Am. Rep. 131.

[3] Foss *v.* Harbottle, 2 Hare 461; McDougall *v.* Gardiner, 2 Ch. D. 13; Hawes *v.* Oakland, 104 U. S. 450; Dunphy *v.* Travelers' Newspaper Asso., 146 Mass. 495, 16 N. E. 426; Strout *v.* United Shoe Co., 215 Mass. 116, 102 N. E. 312.

[4] Bagshaw *v.* Eastern Union R. Co., 7 Hare 114; Continental Securities Co. *v.* Belmont, 206 N. Y. 7, 99 N. E. 138; Woolsey *v.* Dodge, 18 How. 331; Endicott *v.* Marvell, 81 N. J. Eq. 378, 87 Atl. 230; Beckett *v.* Planter's, etc., Co. (Miss.), 65 South 275; Sheehy *v.* Barry, 87 Conn. 656, 89 Atl. 259. Moreover it is a primary essential that the suit be brought in behalf of the corporation and not for the direct benefit of the stockholder, although the ultimate effect is to benefit the stockholder. Converse *v.* United Shoe Machinery Co., 209 Mass. 539, 95 N. E. 929.